

**THE CONSTITUTIONALITY OF DEATH PENALTY AND REDUCTION OF CAPITAL
CRIMES IN UGANDA: A CASE STUDY OF LUZIRA PRISONS, KAMPALA**

BY

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**A RESEARCH REPORT SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
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DECLARATION

I Serunjogi Divinor hereby declare that the information in this research report is my own work and has never been submitted to any other university or institution for any award or publication.

Signature

.....

Serunjogi Divinor

Date

.....19/07/2012.....

APPROVAL

This research report by Serunjogi Divinor has been under my supervision and is ready for submission to Kampala International University.

Signature.....

Date:

DEDICATION

I dedicate this work my parents Mr. Serunjogi David and Mrs. Serunjogi Sarah for imparting in me the moral integrity and educating me as well as teaching me the value of hard work.. They have been my source of inspiration and may God bless them abundantly.

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ABSTRACT

This study was carried out to find out the constitutionality of death penalty on curbing capital offences. Luzira Prisons was the case study considered for this study. To achieve the purpose of the study, the study investigated crimes punishable by death penalty; determined the rate of death penalty in Luzira Prisons; establishes justifications for death penalty as well as limitations for death penalty; and lastly, alternative ways for punishing capital offenders were established as specific objectives.

In the literature review, different Articles; provisions and scholars/authors works were internalized to give some understanding to the variables studied.

A case study design involving both qualitative and quantitative techniques was involved and study population of 500 people was targeted. A sample size of 80 respondents was finally determined through stratified random sampling. Both interview method and questionnaires were used to gather data in the field and reliability and validity of instruments was determined by expert judgment and pre-testing. All ethical and logistic considerations were seriously taken and data processing and presentation was done by Microsoft Word and Excel.

The research findings are that some respondents are still convicted of death penalty though the rate of death penalty is now very low. Further still, many respondents believed that death penalty is actually unconstitutional since it violates constitutional provisions of respect for human dignity and protection from inhuman treatment as reflected in Article 24 and protection of right to life as reflected in Article 22.

The study concluded that punishing capital offenders by capital punishment or death penalty is not appropriate in the modern or contemporary world. Thus, different multi-sectoral approaches involving different stakeholders should be put in place so as to discourage the act of death penalty.

CHAPTER ONE

INTRODUCTION

1.1 Background Information

Death penalty that is also called as the capital punishment or death sentence or execution is a legal process whereby a person is put to death by the state as a punishment for a crime¹. Crimes that can result in a death penalty are known as capital crimes or capital offences. According to Cordle (1996) the term capital originates from the Latin *capitalis*, literally "regarding the head" (referring to execution by beheading)².

The first established death penalty laws date as far back as the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes³. According to Debra (1987) the death penalty was also part of the Fourteenth Century B.C.'s Hittite Code; in the Seventh Century B.C.'s Draconian Code of Athens, which made death the only punishment for all crimes; and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets⁴. Death sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement.

In the Tenth Century A.D., hanging became the usual method of execution in Britain⁵. As regards name, in the following century, William the Conqueror would not allow persons to be hanged or otherwise executed for any crime, except in times of war. This trend would not last, for in the Sixteenth Century, under the reign of Henry VIII, as many as 72,000 people are estimated to have been executed. Some common methods of execution at that time were boiling,

¹ Cordle Jenifer (1996), Social Discontent, Retribution and the Constitutionality of Capital Punishment for Raping a Child

² Jeffrey Fagan, "deterrence and death penalty: the critical review of new evidence (testimony to the New York state assembly standing committee on codes, judiciary and corrections, hearings on the future of capital punishment in the state of New York January 21st 2005.

³ [Htt://www.amnesty.org/en/death_penalty](http://www.amnesty.org/en/death_penalty)

⁴ Death penalty information center 2005, The preamble of the constitution of the movement, a culture of life and the death penalty.

⁵ Lormand Pamela (1999); Proportionate Sentence for the Rape of a Minor

burning at the stake, hanging, beheading, and drawing and quartering. Executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason⁶.

Capital punishment has in the past been practiced by most societies including African continent. Many Africa countries have been and still practice death penalty. However, currently, only 58 nations actively practice it, and 97 countries have abolished it (the remainder have not used it for 10 years or allow it only in exceptional circumstances such as wartime)⁷. It is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment⁸.

As being indicated, currently Amnesty International considers most countries abolitionist (Amnesty Report, 2010). The UN General Assembly has adopted, in 2007, 2008 and 2010, non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. Although many nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, as the People's Republic of China, India, the United States of America and Indonesia, the four most-populous countries in the world, continue to apply the death penalty (although in India, Indonesia and many US states it is only used rarely). Each of these four nations voted against the General Assembly resolutions⁹.

In Uganda, the death penalty has also been operational. According to Amnesty International report, there were at least 525 inmates on death row in Uganda in December 2004. However, no civilians have been executed since May 1999, when 28 death row inmates were hanged at Luzira Prison. Three soldiers were executed by firing squad in March 2003 (Simon, 2007).

Alarmed by reports regarding the administration of the death penalty in Uganda, a petition was filed in September 2003 against the death penalty, signed by 417 death row inmates (Marzilli, 2008). As the petition was pending before the Constitutional Court of Uganda, the FIDH decided

⁶ Baldus David et al., (1983), Comparative, the View of Death Sentences: An Empirical Study of the Georgia Experience

⁷ Fletcher B Betty (1995), The Death Penalty in America; Can Justice be Done?

⁸ Act 50/001/2010 Amnesty international, March 2010

⁹ Death penalty information centre 2005, the preamble of the constitution of the movement, a culture of life and the death penalty

to send an international fact-finding mission to the country. The mandate of the mission was to inquire into the administration of the capital punishment in Uganda, including the conditions of detention on death row. The objective was also to assess the possibility of Uganda abolishing the death penalty, or adopting a moratorium on capital punishment, as a first step towards its abolition, and to issue recommendations in that regard¹⁰.

As indicated in Amnesty International (1999) the cooperation of the civilian authorities was fully satisfactory since the FIDH mission was able to meet with a number of officials, including the Minister of Internal Affairs and the Chief Justice of Uganda; the delegates were also able to visit the Kirinya (Jinja) prisons (Jinja Remand Prison and Jinja Main Prison) and to meet death row prisoners.

The general feeling of NGOs and abolitionists in Uganda is that the most pressing issue is the situation of ordinary prisoners, while the death penalty as administered by the military should be addressed at a second stage (Amnesty International, 1999). The questions relating to the military are sensitive issues in Uganda, which might also explain that position. The focus of the present report is consequently mainly on the death sentences pronounced by ordinary criminal courts¹¹.

However much the international bodies such as Amnesty International try to emphasize the need for abolishing the death penalty in Uganda, all efforts have been down played by the government. The resistance of the Ugandan government to call off capital punishment completely demands further investigation on whether the practice can help to reduce capital offences or crimes or not. Thus, this study attempted to investigate the constitutionality of death penalty as basis for reduction of capital crimes while considering Luzira Prison, in Nakawa Division as a case study.

¹⁰ Death sentences and executions 2009, by Amnesty International Report

¹¹ The death sentences and executions by Amnesty international Act 50/001/2010

1.2 Statement of the Problem

Much as the Amnesty International and other international bodies try to call off the practice of capital punishment, Johnson (2005) indicated that the government of Uganda is hesitant to heed the demands of the international bodies in regards to death penalty. The practice of capital punishment remains one of the tools of the government of Uganda to punish capital offenders or criminals more over there are some other ways of punishing such offenders. It is therefore within this background that this study attempted to investigate the extend to which capital punishment or death penalty can help to reduce cases of capital crimes in the country while considering Luzira Prisons as a case study.

1.3 Purpose of the Study

The purpose of this study was to investigate the relationship between the constitutionality of death penalty and level of capital crimes.

1.4 Specific Objectives

This study was based on the following objectives:

- (i) To find out the crimes punishable by death penalty in Luzira Prisons.
- (ii) To find out the rate of death penalties in Luzira Prisons.
- (iii) To establish justifications for capital punishment.
- (iv) To find out limitations of death penalties as a punishment for capital offenders.
- (v) To find out other alternative ways of punishing capital offenders.

1.5 Research Questions

This study sought to answer the following research questions:

- (i) What crimes are punishable by death penalty in Luzira Prisons?
- (ii) What is the rate of death penalty in Luzira Prisons?
- (iii) What are the justifications for death penalty in curbing crimes?
- (iv) What are the limitations of death penalty as a punishment for capital offenders?

(v) What other alternative ways can be used to punish capital crimes?

1.6 Research Scope

1.6.1 Content Scope

This study investigated the crimes punishable by death penalty; rate of death penalty in Luzira Prisons; justifications for death penalty; limitations of death penalty; and lastly, alternative ways to punish capital offenders.

1.6.2 Geographical Scope

This study was carried out in Luzira Prisons, Nakawa Division in Kampala. Both prisoners and prison wardens were investigated for detailed information regarding the topic under investigation.

1.6.3 Time Scope

The time scope for this study was four years that is, from 2008 to 2011. Within this time scope detailed information regarding the topic under study was obtained. This time scope was sufficient to investigate the rate of death penalty, justifications and other issues of interest about death penalty.

1.7 Significance of the Study

This study will be significant to policy makers in advocating for other means of punishments that can be considered human rather than death penalty since it will explain some of the limitation of this form of punishment.

This study will also be helpful to the judiciary who in most cases take the upper role in executing capital offenders to death penalty since it will provide some tangible information for reflection.

This study will also provide sufficient information to general public on which crimes are punishable by death penalty hence helping in the prevention of capital crimes.

This study may also be useful to the general public in sense that they may be enlightened about the limitations of death penalty hence develop appropriate ways of denouncing the practice of death penalty as a form of punishment.

This study will also generate some new information regarding constitutionality of death penalty especially in the case of Luzira Prisons hence this can be used by other researchers as a reference.

The researcher will also benefit from this study since she will acquire some skills and knowledge of data collection, analyzing and interpretation especially in the area of death penalty.

This study will also benefit the research since it is in partial fulfillment of the requirements for the award of Bachelor's Degree in Laws of Kampala International University.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter articulates what other researchers have noted about death penalty. It established aspects of constitutionality of death penalty, followed by the limitations of death penalty; positions of different religious groups and concerns of human right body regarding death penalty.

2.2 The Legal Provisions Governing the Death Penalty in Uganda

A chapter on Human Rights has been part of the constitution since independence. The former colonial regime insisted on a Bill of rights incorporated in the independence constitution. The right and freedoms adopted by the 1962 constitution were largely those included in the 1948 universal Declaration of Human Rights (Gunn, 2004).

International Human Rights instruments were ratified later, including the international covenants on civil and political rights (ICCPR) and on Economic, social and cultural rights (ICESCR) in 1987, the convention against Torture and other cruel, inhuman or degrading treatment or punishment in 1996 and the convention on the rights of the child in 1990¹². In order to incorporate those instruments into domestic legislation and give them legal force in national courts, much legislation and give them legal force in national courts, many new provisions were added in the constitution of 1995. Under Ugandan law, the various human rights instruments are not directly enforceable by the courts or other administrative authorities. They first have to be incorporated into domestic legislation or administrative arrangements. For a ratified instrument to become national law, a law needs to be adopted by the parliament. The rights to education and to the family, the rights of women and children and the rights of minorities were added to the original political and civil rights enshrined in the constitution of 1962¹³.

¹² Debra C. Moses (1987), *Is Death Penalty for Killers Only?*

¹³ Bohm R. (1999), *Deathquest: An Introduction to the Theory and Practice of Capital Punishment*

This new of Rights lays down a foundation on which positive discrimination may be applied for the emancipation of women, the empowerment of persons with disabilities and the protection of children. Economic, social and cultural rights are now recognized in the constitution.

2.3. Ratification of International Human Rights Instruments

Uganda is a state party to seven of the major international Human Rights treaties (the ICESCR, the ICCPR, the International Convention on the Elimination of all forms of Racial discrimination, the convention on the elimination of all forms of discrimination against women, the convention on the rights of the child, the convention against torture and other cruel, inhuman or degrading treatment or punishment and the international Convention on the protection of the rights of all migrant workers and members of their families), as well as the first optional protocol to the ICCPR and the two optional protocols to the conventions on the rights of the child (on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography) the African Charter on Human and Peoples Rights and the protocol to the African charter on Human and Peoples' rights on the establishment of an African Court on Human and Peoples' rights)¹⁴.

Uganda is also a party to the main international humanitarian law instruments, in particular the Geneva Conventions of 12 August 1949 for the protection of victims of war and the Additional protocols thereto, of 1977¹⁵.

On 14 June 2002, Uganda ratified the Rome Statute of the International Criminal Court and later in December 2003, the government of Uganda submitted a referral to the court on the situation in Northern Uganda. In June 2004, the situation in Uganda was assigned to the preliminary chamber II, and the prosecutor announced the launch of an investigation in Uganda in July 2004¹⁶.

The treaty of Rome setting up the International Criminal Court excludes recourse to the death penalty for the most serious international crimes (genocide, war crimes and crimes against humanity). Ugandan authorities declare themselves very committed to the struggle against

¹⁴ Douglas W. Vick (1995), *Poorhouse Justice, Underfunded indigent Defence Services and arbitrary Death Sentence*

¹⁵ Cordle Jenifer (1996), *State Verses Wilson: Social Discontent, Retribution and the constitutionality of Capital Punishment for Raping a Child*

¹⁶ Clark Alan (1996), *Procedural Labyrinth and the Injustice of Death: A critique of Death Penalty Habeas Corpus*

impunity in the framework of the newly established international criminal system. It is consequently contradictory for the authorities to keep the death penalty in the domestic legislation for a number of crimes, including some that are not the most serious¹⁷.

In addition, implementation legislation should be adopted as soon as possible, in order to match declarations of support to the ICC with facts. That legislation should be fully confirm with the spirit and the letter of the ICC statute¹⁸.

2.4 The Ugandan Human Rights Commission and Death Penalty

While drafting the 1995 constitution, the constituent Assembly realized that it was necessary to create and empower a permanent body for the promotion and protection of Human Rights

Article 51 of the constitution was therefore written specifically for this purpose. It creates the Uganda human rights commission (UHRC) with quasi-judicial functions.

The commission possesses large powers to protect the respect of human rights, including to investigate at its own initiative or on complaint made by any person or group of persons against the violations of any human rights, to have access to and monitor detention conditions; to conduct educational and other activities to promote human rights awareness, and to monitor and make recommendations for government compliance with its international obligations¹⁹.

The commission is empowered to subpoena any witness, to request any document, to order the release of any detained person, and recommend payment or compensation or any other legal remedy after it finds the existence of human rights abuse. However, the commission cannot investigate any matters pending before a court of law, matters relating to Uganda's dealing with other countries or international organizations, or matters relating to the prerogative of mercy²⁰.

The commission's tribunal handles a large number of complaints each year, and often awards generous compensation to the victims. The government departments responsible for those human rights violations include the Uganda People's defense Force (UPDF) and the Uganda Police

¹⁷ Cordle Jenifer (1996), *State Verses Wilson: Social Discontent, Retribution and the constitutionality of Capital Punishment for Raping a Child*

¹⁸ *Death sentences and executions 2009*, by Amnesty International Report

¹⁹ *Ibid*

²⁰ *Ibid*

Force (UPF). Unfortunately, 90% of the awards granted by the commission's tribunal have not been honored by the Attorney General.

2.5 Public Opinion and the Death Penalty

According to the information by Leibman (2002), the majority of the people met by the FIDH mission were in favour of keeping the death penalty, at least for certain crimes (murder, rape). The media also generally favourable to the death penalty. The prison officials were the most opposed to capital punishment probably because of the involvement of the prison staff in the executions and the resulting trauma.

Prison officials like Vincent Oluka, Principal Officer II working with the Uganda Government Prison Service says that his interaction with condemned prisoners for 14 years and observing their character, behaviour and attitude whilst in prison has led him to form the view that these prison are poor and misguided people who engaged in antisocial behaviour when they were outside. He said that he interacts frequently with them and they have never attacked him²¹.

According to the same report, no opinion was expressed about the death penalty imposed by military court, in spite of the fact that this is clearly a parody of justice. Matters relating to the military seem particular sensitive which explain the silence.

A recurrent argument by officials in favour of the death penalty is that it is cheaper to execute death row inmates that to imprison them long term. However, Joseph A.A. Etima argues to the contrary²². According to his research into the prison system in Uganda, the percentage of prisoners on death row is negligible compared to the number of other prisoners and therefore their upkeep is negligible. He supported these findings with the prison statistics that showed that is 2000 out of the general prison population of 15,391 only 225 were on death row, representing only 1.5% of the entire prison population. He also argued that these prisoners can be made to contribute significantly to their upkeep and by far the strongest argument; he argued that the value of human life cannot be quantified in monetary terms.

²¹ Warren (2006), *Defending the Human Spirit, Jewish Laws Vision for a Moral Society*

²² Death sentences and executions 2009, by Amnesty International Report

Some members of the executive support the death penalty. This is particularly true of hon. Ruhakana Rugunda, the Uganda's former Minister of Internal Affairs, because Uganda has a terrible history of security forces using force freely to maim, and kill. Given this background of gross human rights abuse, he is of the view that the only way to stem the tide is to apply the mosaic law of an eye for an eye a tooth for a tooth²³.

He also mentioned that it is necessary to assess the extent to which local circumstances in Uganda would permit the operation of human rights instruments. In his view, some of the international human rights instruments are not relevant to local circumstances.

Takashi (2001) indicated that it should also be noted that the Uganda human rights commission did not recommend the full abolition of the death penalty, but recommended to the Constitutional Review Commission the amendments of the legislation to remove politically related offences from the list of crimes punishable by death.

However, even if abolition is a long way off, the June 2005 ruling of the Uganda Constitutional Court proves that Ugandan society is now open to further debate on the possible abolition of capital punishment.

2.6. Military Justice and Death Penalty

Justice for military personnel is provided for under the Uganda People's Defence Forces Act CAP 307 of the laws of Uganda vol. XII.

Section 14-44 spells out persons and circumstances subject to military law. Sections 45-71 spell out the miscellaneous offences punishable under military law, while section 72-94 provides for the due process to be followed in the arrest, trial and punishment of military offenders.

Some of the offences are: interfering with the process of law, unlawful detention of persons in custody, treachery, subversion, conspiracy, disobeying lawful orders and obstructions of police duties.

²³ Death sentences and executions 2009, by Amnesty International Report

The Act under sections 77,78,80,81 and 84 provides for the composition of powers of the following courts respectively; Unit Disciplinary Committee, Field Court Martial, Division Court Martial, General Court martial and court martial appeal court.

A unit disciplinary committee (UDC) is based at each army unit. It has powers to try and determine all cases other than those involving murder, manslaughter, robbery, rape, treason, terrorism and disobedience of unlawful orders resulting in loss of life.

The field court martial is provided for under section 78: "it shall only operate in circumstances where it is impracticable for the offender to be tried by a unit disciplinary committee or division court martial".

The division court martial on the other hand is based at the division and has unlimited jurisdiction to try any offence under the Act. It is chaired by an officer not below the rank of a major.

The general court martial provided for under section 81(1) has both original and appellate jurisdiction over all offences and persons under the Act.

The court Martial Appeal Court is the highest appellate court under the army structure.

While structure is well laid out however, there have over the years been problems related to jurisdiction especially of unit Disciplinary committees and the field court martial. There have also been complaints about malicious convictions under the unit disciplinary committees.

Military justice has also been and continues to be riddled with the absence of appellate structures. In May 2003, FHRI received a petition from 17 army men, all sentenced to death by UDC's but they had not been allowed to appeal for the previous 8-10 years. All of them complain that the charges against them were trumped up. There are stores of such prisoners strewn in different prisons throughout the country.

In 2002 two soldiers, Cpl James Omedio and Pte Abdallah Mohammed, were subjected to a military trial and executed shortly after for killing an Irish priest and two of his staff. This trial and punishment did not follow proper due process in violation of the Ugandan constitution²⁴.

Moreover, these two soldiers were tied on trees and executed in public and in the presence of children. Public executions constitute a cruel, inhuman and degrading treatment. The UN Commission on Human Rights asks states not to carry out capital punishment in public or in any other degrading manner.

2.7. The Statistical Information on Death Penalty

The first hangings since the 1970s following condemnations by the High court took place on 15 March 1989 when Kassim Obura, Lukoda Mugaga and Thomas Ndaiggana were executed in Luzira prison. Kassim Obura, who was a member of the public safety unit, a government security unit responsible for gross human rights violations under the government of Idi Amin, was convicted of murdering a prisoner in November 1973. He had been in prison for almost 10 years.

There were no further executions under the Uganda Penal code until 29 June 1991, when nine prisoners convicted of aggravated robbery or murder were hanged in Luzira prison. Among them were three UNLA soldiers²⁵, William Otasono, Milton Ongom and Nicolas Okello, who were stationed at Mbuya General Headquarters near Kampala, and who had been convicted in July 1984 of robbing and murdering a man. Their appeal to the Supreme Court was rejected in March 1989.

In a report published in September 1992, Amnesty International reported 40 executions since 1987²⁶.

No civilians have been executed since May 1999, when 28 death row inmates were hanged at Luzira Prison. Two soldiers were executed by firing squad in 2002 and three soldiers were executed in March 2003²⁷.

²⁴ UNLA (Uganda National Liberation Army) is the military arm of the Uganda National Liberation Front (UNLF).

²⁵ UNLA (Uganda National Liberation Army) is the military arm of the Uganda National Liberation Front (UNLF). The UNLF was formed by exiled Ugandans in the late 1970s. It was the Ugandan force that fought with the Tanzanian people's Defence Force (TPDF) to topple from power the regime of Idi Amin in Uganda.

²⁶ See Uganda: The failure to safeguard human rights (AFR 59/05/92), published by Amnesty International in September 1992.

Every year, the UN Commission on Human Rights reiterates its call upon states that still maintain the death penalty “to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution²⁸.” As noted by the UN special Rapporteur on Extrajudicial, summary or Arbitrary executions, “secrecy prevents any informed public debate about capital punishment within the relevant society. Countries that have maintained the death penalty are not prohibited by clear obligation to disclose the details of their application of the penalty²⁹.” Uganda should consequently abide by the obligation to release such statistics publicly.

Table 2.1: Statistics of Application of the Death Penalty in the Last 15 years

Year	Clemency cases	No. of Executions	Names of the executed	Offence(s)
1989	-	3	Kassim Obura, Lukoda Mugaga & Thomas Ndaigana	Murder
1990	3		Unknown	Unknown
1991	5	9	Milton Ongom, William Otasono & Nicholas Okello	Aggravated Robbery and murder
1993	9	12	Joseph Kizza, Kelly Omuge, Kalist Ssebugwawo & Robert Kasolo	
1996		3	Suleman Ndamagye, Salim Mulumba & Dominic Oboth	Murder and rape
1999	13	28	William Bataringaya, haji Ssebirumbi, Emmanuel Kasujja & Leo Mwebaza	murder

Source: Uganda Prisons Headquarters,

Benjamin Odoki, Chief Justice, told the said that about 60% of the detainees awaiting trial in the Ugandan prisons are charged with the offence of defilement.

²⁷ Amnesty International Annual Report 2005

²⁸ Res. 2004/67

²⁹ E/CN.4/2005/7, paras 57 and 59.

Table 2.2: Number of Prisoners on the Death Row per Years

December 1997	More than 1,000
December 1999	269 (including 150 soldiers)
December 2000	More than 260
December 2002	354
December 2003	At least 432
December 2004	525

Source: Amnesty International Annual Reports.

Table 2.3: Uganda's Death Row as at the 1st January, 2004

offence	Length of stay in prison						Total
	<1 year	1-5 yrs	5-10 yrs	10-15 yrs	15-20 yrs	Above 20 yrs	
Murder	84	165	48	8	2	-	307
Robbery	36	79	16	8	1	-	140
Treason	-	-	-	4	-	-	4
Kidnap					1	1	2
Mutiny	-	3	-	-	-	-	3
Cowardice	1	-	-	-	-	-	1
Total	121	247	64	20	4	1	157

Source: Uganda Prisons Headquarters

2.8 The Legal Framework of Death Sentences under Ugandan Law

Studies in the case of Uganda indicate that the country's penal code provides for 15 capital offences: nine separate offences grouped under the collective heading "treason" and offences against the state, rape, defilement, murder, aggravated robbery and aggravated kidnapping. Death is a mandatory punishment for six of the treasonous offences and a discretionary sentence for the remaining felonies at the same go.

The Uganda People's Defense Forces Act (formerly called the National Resistance Army Statute) established the military justice system of the Uganda People's Defense Forces (UPDF)

and came into force on 20 March 1992. It includes a long list of offences which can entail the death penalty: treachery, mutiny, disobeying lawful orders, failing to execute one's duties, offences relating to prisoners of war, cowardice in action, offences by persons in condemned when in action, breaching concealment, failure to protect war materials, failure to brief, offences relating to security, spreading harmful propaganda, desertion, offences relating to convoys, losing, stranding or putting vessels in danger, wrongful acts in relation to aircraft, inaccurate certificate, dangerous acts in relation to aircraft, attempt to hijack aircraft, fire-raising³⁰.

Section 8 of the Act defines other terrorist offences. These include aiding, abetting, financing, harboring or rendering support to any person, knowing or having reasons to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism. Conviction on these offences also carried a penalty of death.

2.9 The Notion of Most Serious Crimes

The fact that Ugandan legislation provides for the death penalty for a great number of crimes, including non-violent crimes, constitutes a violation of international human rights standards. In that regard, it should be noted that in 2004, the UN Human Rights Committee expressed its concern about the broad array of crimes for which the death penalty may be imposed and urged the Ugandan authorities to limit the number of offences punishable by death³¹.

However according to para. 1 of the UN safeguards guaranteeing protection of the rights of those facing the death penalty, "capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."

People are rarely condemned for the offence of treason in Uganda. Those cases are political cases whereby the prosecution is used as a tool to eliminate or isolate political opponents and to strife descent; the offence of treason is political and should not entail the death penalty. It should be noted that the Ugandan Human Rights Commission recommended to the Constitutional

³⁰ Section 16 to 39, Uganda People's Defence Forces Act

³¹ Concluding observations of the UN Human Rights Committee, Uganda, CCPR/CO/80/UGA, 4 May 2004

Review Commission the amendment of the legislation to remove the politically related offences from the list of crimes carrying a death sentence³².

In 2002, the Un special Rapportuer on extrajudicial, summary or arbitrary executions said that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, actions relating to prevailing moral values, or activities of a religious or political nature, including acts of treason, espionage or other vaguely defined acts usually described as “crimes against the state³³.”

2.10 New Crimes Entailing the Death Penalty

As noted above, a 202 enactment added the crime of terrorism and related offences to the list of crimes entailing the capital punishment. Since Uganda ratified the ICCPR in 19987, it means that this new offence was clearly added while the covenant was already into force in Uganda.

In its resolutions 2004/67 and 2005/59, the UN Commission on Human Rights called upon all states that still maintained the death penalty “to progressively restrict the number of offences for which it could be impose and, at least, not to extend its application to crimes to which it did not at present apply³⁴.”

It is regrettable the recent extension of offences attracting death penalty under Ugandan Law, with the adoption of the Anti- terrorism Act, 2002, in its Article 7. This is also very concerned by the Penal Code (Amendment) Bill 2004 concerning the crime of aggravated robbery³⁵. The object of the Bill is to amend section 286(2) of the Penal Code Act, to provide that mere possession of deadly weapon at the time of or, immediately before or immediately after the time of robbery is sufficient to constitute robbery punishable by death.

³² Ugandan Human Rights Commission , 6th Annual Report, 2003, para 10.13.4, page 98

³³ Report of Ms. Asma Jahangir, special Rapportuer on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, 9 January 2002

³⁴ The Un commission on human rights adopted resolution 2004/67 on the question of death penalty on 21 April 2004, and resolution 2005/59

³⁵ Bills supplement No. 1, Ugandan Gazette No. 7, Volume XCVII dated 13th February 2004

In 1995, the UN Human Rights Committee ruled that the imposition of the death penalty for armed robbery not resulting in death or the wounding of any person violates article 6(2) of the ICCPR³⁶. The planned amendment contravenes this ruling, and should therefore be abandoned.

It should be remembered that the General Comment on article 6 of the ICCPR adopted by the UN Human Rights Committee clearly states that this provision “refers generally to abolition in terms which strongly suggest that abolition is desirable.” As a state party to this instrument, Ugandan should pursue the way to abolition and refrain from adopting new provisions entailing the death penalty.

2.11 The Concept of Mandatory Death Sentences

Another subject of concern for the researcher is that many of these offences carry a mandatory death penalty sentence, which is clearly in contravention of international standards.

According to Ugandan legislation, the offences of murder, treason and aggravated robbery attract a mandatory death penalty on conviction. This is also the case for terrorism, if it directly results in the death of any person (section 7.1.a, anti- Terrorism Act, 2002).

As emphasized by Samuel Serwana Sengendon, Advocate of the High court of Uganda in his affidavit given in support of the petition, “over 99% of the petitioners have had no opportunity to appeal their sentences or to raise mitigating and exculpatory factors at their trials to reduce their sentences, which right is generally available to people accused of lesser offences³⁷.” The petitioners have raised this issue in their petition³⁸.”

The last resolution on the question of the death penalty adopted by the UN commission on Human rights urges all states that still maintain the death penalty to ensure that it is not imposed as a mandatory sentence³⁹.

³⁶ See *Luboto V Zambia*, Communication no 390/1990, UN Doc. CCPR/C/55/D/390/1990/Rev. 1(1995)

³⁷ Affidavit of Samuel Serwanga, vol. 4 of the petition, given in August 2003, and reiterated during the hearings in January 2005.

³⁸ Issue No. 3, “Whether the various laws of Uganda that prescribe mandatory death sentences upon conviction, and bar appeals these sentences are inconsistent with or in contravention of the constitution”, in Susan Kigula , Fred Tindgwiwura, Benn Ogwanga and 414 others versus the Attorney General.

³⁹ UN commission on Human Rights, Resolution 2005/59

The Human rights commission stated in *Eversely Thompson V St –Vincent and the Grenadines*⁴⁰ that “such system of mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case.” The committee pointed out that the possibility of a pardon or a communication of sentence would not change this result, so that “the existence of a right to pardon or commutation... does not secure adequate protection to the right to life, as these discretionary measures by the Executive are subject to a large range of other considerations compare to judicial review in all aspects of a criminal case.

In *Edwards and Others V. The Bahamas*⁴¹, the Inter –American commission found that the imposition of the mandatory death penalty violated numerous provisions of the American Declaration on the Rights and Duties of man.

Mr. Livingstone Ssewanyana, of the Uganda foundation for human rights initiative, expressed his satisfaction on the issue when leaving the courthouse, pointing that “death row prisoners can now seek redress in court to have their case reconsidered, which was not possible before⁴².”

The Eastern Caribbean court of Appeal, in the case *Peter Hugues and Newton Spence V. The Queen*⁴³, had that the mandatory imposition of the death penalty was unconstitutional, as it amounted to inhuman and degrading punishment.

2.12. The Road to Abolition of Death Penalty in Uganda

Article 22(1) of the Ugandan constitution, which protects the right to life, provides that no person shall be deprived of life intentionally, except in execution of a sentence passed by the

⁴⁰ *Eversely Thompson V St-Vincent and the Grenadines*, communication No. 806/1998, UN Doc. CCPR/C/70/D/806/1998 (2000)

⁴¹ Report No. 48/01 (4th April 2001), Annual Report of the Inter- American commission on Human Rights (IACHR) 2000

⁴² Advocates John W. Katende explained a few hours after receiving the copies of the judgment that a large number of the petitioners could now seek to obtain a review of their sentence, mentioning those who had their sentence confirmed for more than two years and for whom the government had not exercised its prerogative of mercy in their favour, those who had not yet exhausted their right of appeal are now entitled to appeal against the death sentence and raise any points of mitigation, and those who have not yet been sentenced are entitled to raise any points of mitigation.

⁴³ *Peter Hugues and Newton Spence V The queen*, 2 April 2001, Eastern Caribbean court of Appeal, criminal Appeals 17/1997 and 20/1998.

court of competent jurisdiction in respect of a criminal offense under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellant court.

In 2001, a constitutional Review Commission was appointed by President Yoweri to review the Constitution. The commission's brief was to gather opinions on the constitution from individuals, non governmental groups and state institutions. Debates on the use of death penalty featured prominently during the constitutional review. A group of prisoners asked to see the commissioners' members and they submitted their arguments to the commission. The final report of the commission was handed to the ministry for justice and constitutional affairs in December 2004. Unfortunately, the constitutional review commission adopted a position favourable to the retention of the death penalty.

Realizing that their submission to the constitutional review commission would fail, the group of prisoners decided to work on a petition challenging the constitutionality of the sentence. Helped by Father Tharcisio Agostoni and the Foundation for Human Rights Initiative (FHRI), the FIDH affiliate in Uganda, they convinced the other detainees on death row in Uganda and they all joined together and filed a petition in the constitutional court of Uganda in September 2003⁴⁴.

Several African countries had already experienced a similar legal challenge. In Zimbabwe the Supreme Court held, in 1993, that it would be unconstitutional to execute four prisoners under sentence of death because of the intense and prolonged suffering they had undergone on death row⁴⁵.

In Tanzania, a High court ruled that hanging as a form of punishment, was cruel, degrading and inhuman and therefore unconstitutional⁴⁶.

In Nigeria, the court of Appeal decided in 1996 that condemned prisoners could ask a High court to determine whether they should be re-sentenced in view of their prolonged stay on death –

⁴⁴ Susan Kigula, Fred Tindgwiwura, ben Ogwang and 414 others V Attorney General, constitutional petition No.6 of 2003

⁴⁵ Catholic commission for justice and peace in Zimbabwe V Attorney General Zimbabwe and others, 1993 (4) SA 239 (ZSC), however, the government reacted to this decision by amending the constitution to foreclose such grounds for reviewing death sentences.

⁴⁶ Mbushuu Dominic Mnyaroje and Another V The Republic, criminal Appeal No. 142 of 1994. On appeal, the Tanzanian court of Appeal agreed that it was cruel and degrading, but ruled that it was not unconstitutional.

row⁴⁷. In Botswana, an attempt was also made to declare capital punishment unconstitutional in 1995, but the court of Appeal held that it was not unconstitutional⁴⁸.

In a landmark decision in 1995, the South African Constitutional court held that; “ the proclamation of the right (to life) and the respect for it demanded from the State must surely deliberately, systematically and as an act of policy that denies in principle the value of the victim’s life⁴⁹.”

There is however a major difference in the Ugandan case, in that it involved the whole prison populations. This case is historical, and is a first step on the path to the abolition, whatever some of the members of the judiciary might think or declare, as judge G.W. Kanyeihamba, professor of law and justice of the Supreme Court, who wrote that “the abolitionists tend to be small groups of elite minorities with the loudest voices in society⁵⁰.”

⁴⁷ Peter Nemi V The Attorney general of Lagos and Anor. Appeal No. CA/L/221/95

⁴⁸ Patrick Ntesang V The state, court of Appeal, criminal Appeal No. 57 of 1994.

⁴⁹ Justice Didcott, in The State V T. Makwanyane and M. Mcchunu, case No. CCR/3/94, paragraph 176, referred to below as the South African constitutional court judgment.

⁵⁰ Reflections of a judge on the death penalty in Uganda, “ The Uganda, “The Ugandan living law journal , Volume 2, Number one, June 2004 (published by the Uganda Law Reform Commission).

CHAPTER THREE

METHODOLOGY

3.1 Introduction

This chapter dealt with the research design, sampling procedure which included simple random and purposive sampling, sample size, method of data collection which included interviews and questionnaire, and the method of analysis.

3.2 Research design

A descriptive survey and case study designs involving both qualitative and quantitative techniques was used. These designs were chosen as appropriate because they helped to investigate the constitutionality of death penalty and capital crime reduction in the case of Luzira Prisons and generalize the findings to other areas where death penalty is common. The designs were also chosen because they are suitable for intensive investigations of a single phenomenon structure or group being studied.

3.3 Area of Study and Target Population

The study was conducted in Luzira Prisons. However, to obtain detailed information some judges and magistrates and advocates from the high court were also involved in this study.

The target population was 500 people and this included prisoners in death row, prison wardens in Luzira, Judges, magistrates and advocates. The above categories were selected in order to provide appropriate, relevant, sufficient and realistic information about the topic under study.

3.4 Sampling Design and Sample Size

Stratified random sampling was used to select respondents in this study. Stratified random sampling was chosen because of its flexibility in permitting investigation of different personalities of interest for specific subgroups. Mugenda et al (2003) in their research report assert that stratified random sampling design is significant in sense that it enables the researcher to carefully select key respondents that are relevant for the study. This suggests that stratified

sampling method helped in selecting informants who were capable of providing sufficient and topic related data for the study.

The researcher selected 80 informants from a total population of 500 for this study and sample size is summarized in Table 4.

Table 3.1: Sample Size

Category	Total Population	Sample Size
Prisoners	250	23
Prison Wardens	150	30
Judges	10	5
Magistrates	30	9
Advocates	60	13
Total	500	80

Following the recommendation of Gay (2003) on descriptive research, the researcher accessed more than ten percent of total population as representation for investigation.

3.5 Data Collection Tools and Procedures

While carrying the study, the study employed a variety of methods among which included questionnaires and interviews.

3.5.1. The Questionnaire

A questionnaire was used because it could collect information from many respondents in a projected timeframe. All respondents were asked the same questions except in technical circumstances. These questionnaires composed of both close-ended and open-ended part. Close-ended questions were preferred because they were easy to answer and score, while open-ended questions were intended to give respondents a chance to support their opinions in a free atmosphere in addition to predetermined choices.

3.5.2. Interviews

Both formal and informal interviews were also conducted with some of the respondents selected. Guiding questions were used for interviews but during the course, other questions were also

asked depending on the responses by the respondents. Results from interviews were helpful in complementing information that was obtained from questionnaire. During interviews, clarification on some of the statements made by informants took place enabling the interviewee to reveal his or her view point. Information that could not be revealed through questionnaire method was obtained through interview technique.

3.6. Reliability and Validity of Data Collection Tools

The validity of the research instruments was established by expert judgment method proposed by Patton (2002). The University research supervisor judged the materials. The researcher adjusted the materials according to the expert's recommendation and analysis. The materials were then tested with some few prisons in Kabalagala Police. Further adjustments were also made to make the instruments meet some required standard.

3.7 Research Procedure

An introduction letter was secured from the Kampala International University to enable the researcher to visit High Court and Luzira Prisons to inform them formally about the forthcoming study. A list of different target population was made and from that a sample size was obtained.

After selecting the respondents, interview was conducted and questionnaires administered. Information from respondents was recorded and used to derive conclusions about the constitutionality of death penalty in capital crime reduction. Care was exercised in ensuring that the right of those respondents was protected. The study respected human dignity and concealed the identity of respondents in the study. Only informed consent was required.

3.8. Data Analysis and Presentation

Both qualitative and quantitative data analysis techniques were used in the data analysis and presentation. The findings were discussed, analyzed and presented in form of tables, charts and other descriptive methods that was backed by frequency and percentage presentation. The researcher ran all the data presentation and analysis using Microsoft Word and Excel.

3.9. Limitations

The environments or places in which the study was to be conducted were in most cases confidential. This was not easy for the researcher especially in data collection. However, with the letter from Kampala International University, the researcher was able to introduce herself and access the places

One of the challenging limiting in this study was financial constraints. The money required to facilitate different process and research activities was likely not to be enough. However, the researcher tried to look for money in all the angles to make sure that she arranged enough money to meet research requirements

Some of the categories of people sampled in this research such as judges, advocates and magistrates as well as prisoners were not all that free. This was a great challenge during data collection process. However, the researcher tried to meet these categories in their convenience.

CHAPTER FOUR

DATA PRESENTATIONS, ANALYSIS AND DISCUSSION

4.1. Introduction

This chapter presents the findings of the study, the analysis and discussions of the results. The findings are analyzed in relation to the objectives of the study and literature reviewed. Findings were derived from the questionnaires and interviews conducted with respondents.

4.2. Demographic Characteristics of Respondents

4.2.1 Gender

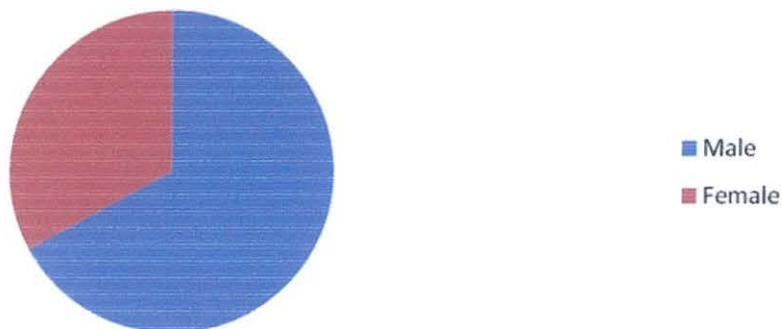
Respondents were asked to tick their appropriate gender during the study process. Table 4.1 illustrates the summary on the gender of respondents.

Table 4.1: Gender-Wise Distribution of Respondents

Gender	Frequency	Percentage
Male	54	67.5
Female	26	32.5
Total	80	100

Source: Primary Data

Figure 4.1: Gender Based Distribution of Respondents



Source: Primary Data

As shown on Figure 4.1, females formed 32.5 percent of the respondents while males formed 67.5 percent. There was somewhat wide gender gap between men and women as respondents because most of the judges, magistrates, prison wardens and even the prisoners were male. However, information from the few female respondents was very vital in complimenting the information given by the male counterpart. In other terms, information that was not delivered by one gender during the study process was revealed by the other gender. This therefore helped in provision of detailed, fair information for academic purpose.

4.2.2 Respondents Age Group

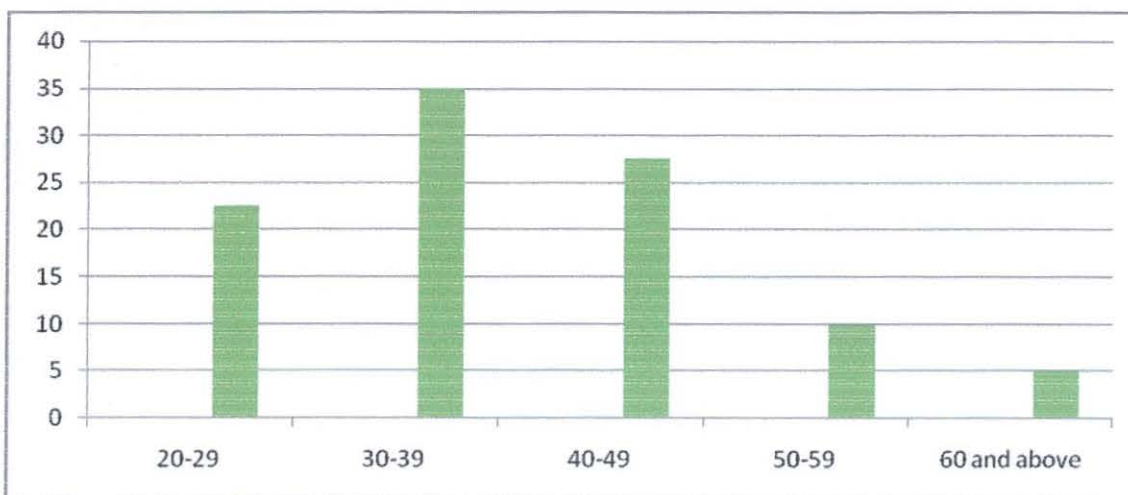
Respondents were asked to tick their relevant age interval as indicated in table 4.2.

Table 4.2: Age Distribution of Respondents

Item (Age)	Frequency	Percentage
20-29	18	22.5
30-39	28	35
40-49	22	27.5
50-59	8	10
60-above	4	5
Total	80	100

Source: Primary Data

Figure 4.2: Age Distribution of Respondents



Source: Primary Data

According to Figure 4.2, most of the respondents (35 %) were at the age of 30 to 39, followed by the age group of 40 to 49 (27.5 %), then 20 to 29 (22.5%), 50 to 59 (10 %), while the oldest, that is from the age of 60 and above formed 5 % of the respondents and were the least participants in the study. The age group differences helped in the realization of different opinions and perceptions on the study variables as people in different age groups were differently influenced hence delivering unique information that helped in the analysis of this study.

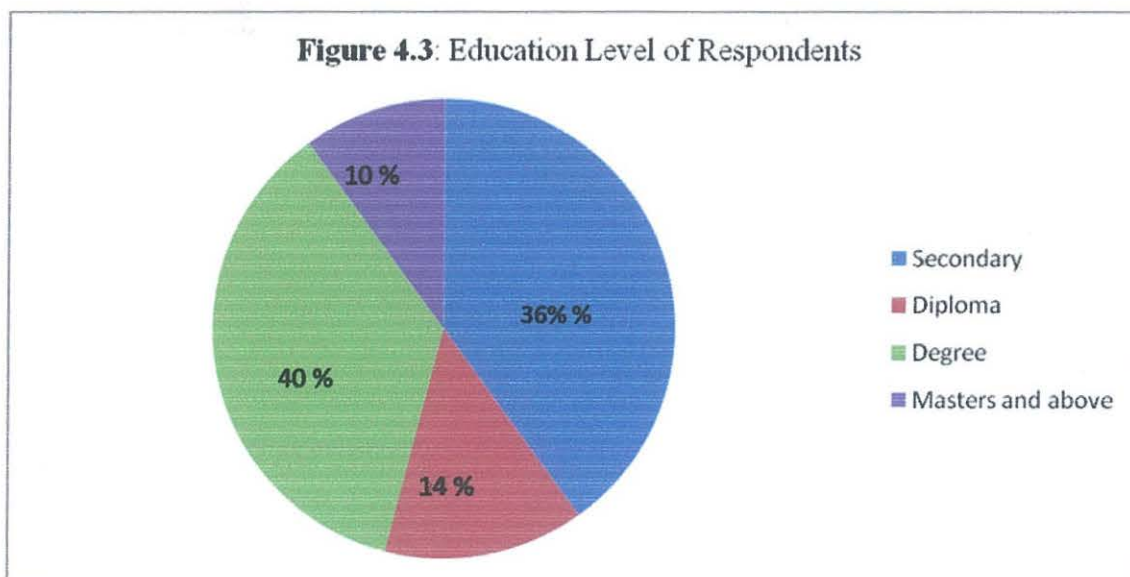
4.2.3 Education Level

Education level of respondents was also investigated in the field. The summary of this is presented in table 4.3.

Table 4.3: Education Based Distribution of Respondents

Level of education	Frequency	Percentage
Secondary	29	36
Diploma	11	14
Degree	32	40
Masters and above	8	10
Total	80	100

Source: Primary Data



Source: Primary Data

The Figure 4.3 shows that respondents with different education level that is, those who stopped in secondary level, diploma graduates, bachelor degree level and those from masters and above were all represented in the research process though the majority of the respondents were those who attained the university degree (40 %), followed by those who stopped in secondary (36 %), then the diploma graduates (14 %) and lastly those who have attained masters and doctorates (10 %). Since the majority of the respondents had better education, their level of analysis on the issues of constitutionalism death penalty and reduction of capital punishment was sound and clear. This also helped in the interpretation and analysis of information in this study.

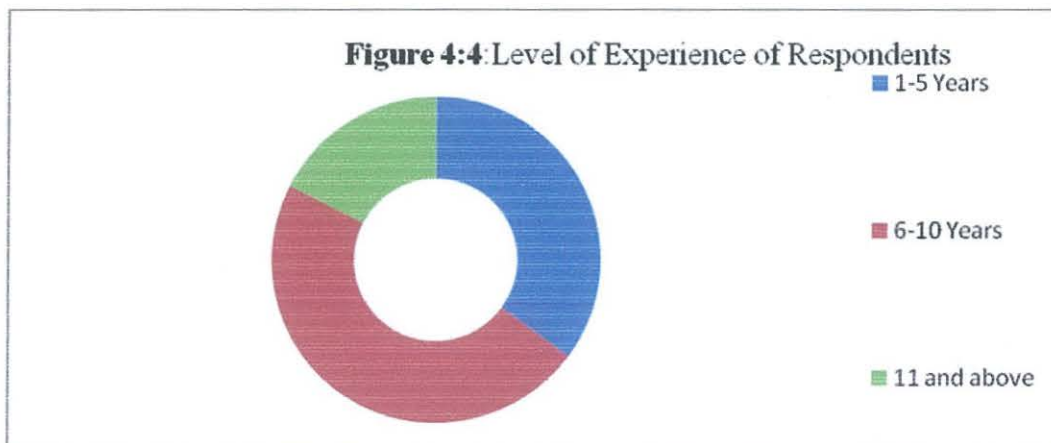
4.2.4 Experience of Respondents

The working experience of respondents and the number of years some other respondents have spent in prison was determined in this study. Finding in this regard in presented in Table 4.4.

Table 4.4: Experience of Respondents

Experience	Frequency	Percentage
01-5	28	35
06-10	38	47.5
11-and above	14	17.5
Total	80	100

Source: Primary data



Source: Primary Data

From the data presented on Table 4.4, it can be noted that the majority (47.5 %) of the respondents have spend from 6 -10 years either working or being imprisoned, followed by the 35 percents of then having an experience from 1 – 5 years, and lastly, the least participants were those who have either been working or imprisoned for over 10 years. People of different experiences delivered also revealed complimentary information to each other as regards to issues concerning constitutionality of death penalty and reduction of capital crimes.

4.2.5 Denomination of Respondents

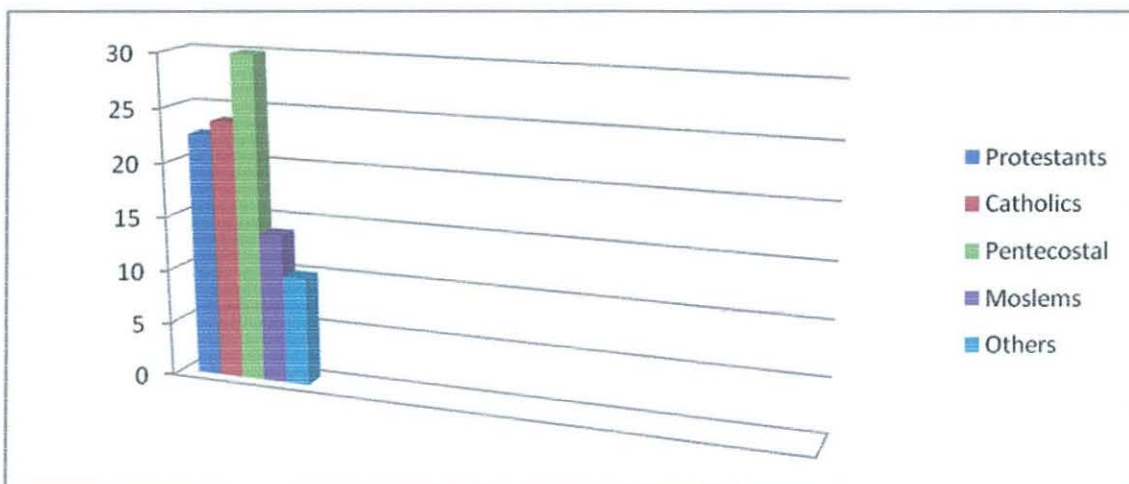
Denomination of respondents was also investigated in this research since people from different denomination may be having different opinions and perceptions of death penalty. The summary on the findings regarding the denomination of respondents is shown in Table 4.5.

Table 4.5: Respondents Denominations

Denomination	Frequency	Percentage
Protestants	18	22.5
Catholics	19	23.8
Pentecostal	24	30
Moslems	11	13.8
Others	8	10
Total	80	100

Source: Primary Data

Figure 4.5: Respondents Denominations



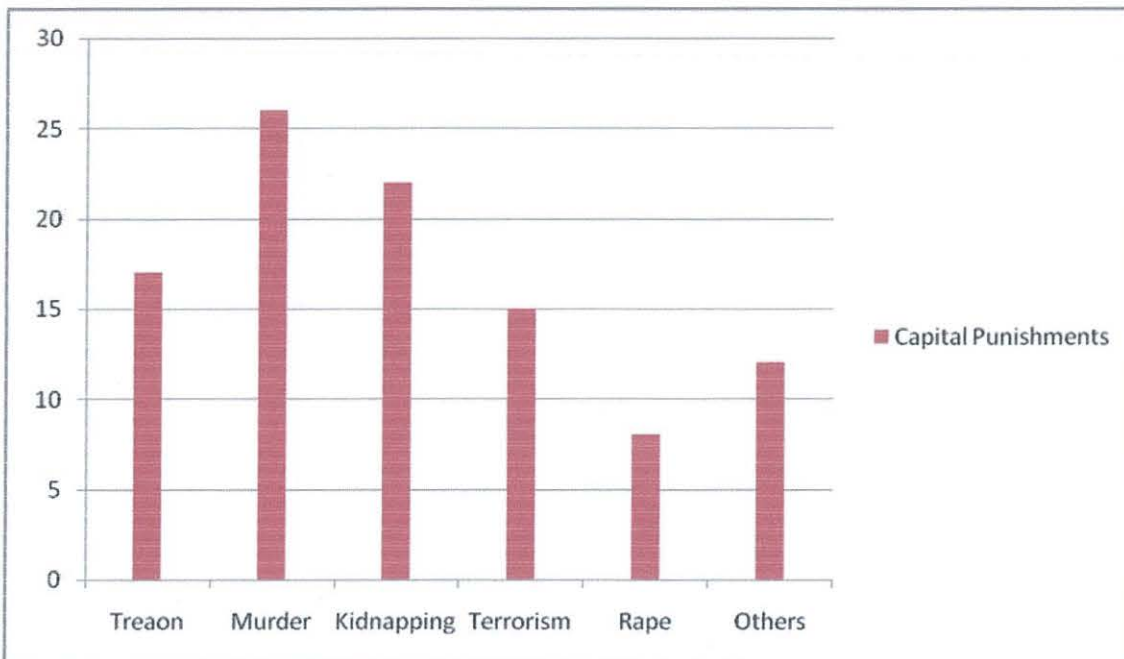
Source: Primary Data

As it can be observed from Figure 4.5, the majority of the respondents investigated in this study were the Pentecostals (30 %); this was followed by the Catholics (23.8 %); then the Protestants (22.5 %); next were the Moslems that formed the (13.8 %) and lastly, people in other denominations formed (10 %). Difference in denomination also helped in obtaining faith based information regarding the aspect of death penalty and reduction of capital punishment.

4.3 Crimes Punishable by Death Penalty in Luzira Prisons

This was the first objective of the study. Respondents were asked to indicate various crimes whose offenders can be punished by death. The summary on this is presented in Table 4.6.

Figure 4.6: Crimes Punishable by Death Penalty in Luzira Prisons



Source: Primary Data

The indication from Table 4.6 is that the commonest capital crimes as regards to the Luzira Prison is murder (26 %); this was followed by the kidnapping (22 %); then treason (17 %); followed by terrorism (15 %); next was other crimes that were not indicated specifically and lastly rape.

According to the information obtained from respondents, at least offenders of such crimes have been at one time executed or punished through death sentence. Relating this finding with what is on ground especially with the literature, it was noted that actually what respondents indicated was in relation to the provisions by the Penal Code Act Chapter 120. In the provisions of the Penal Code Act, Section 23 (1) (d); Section 23 (2) (b); Section 23 (3) (b) and Section 23 (4), the only punishment for committing treason is death penalty.

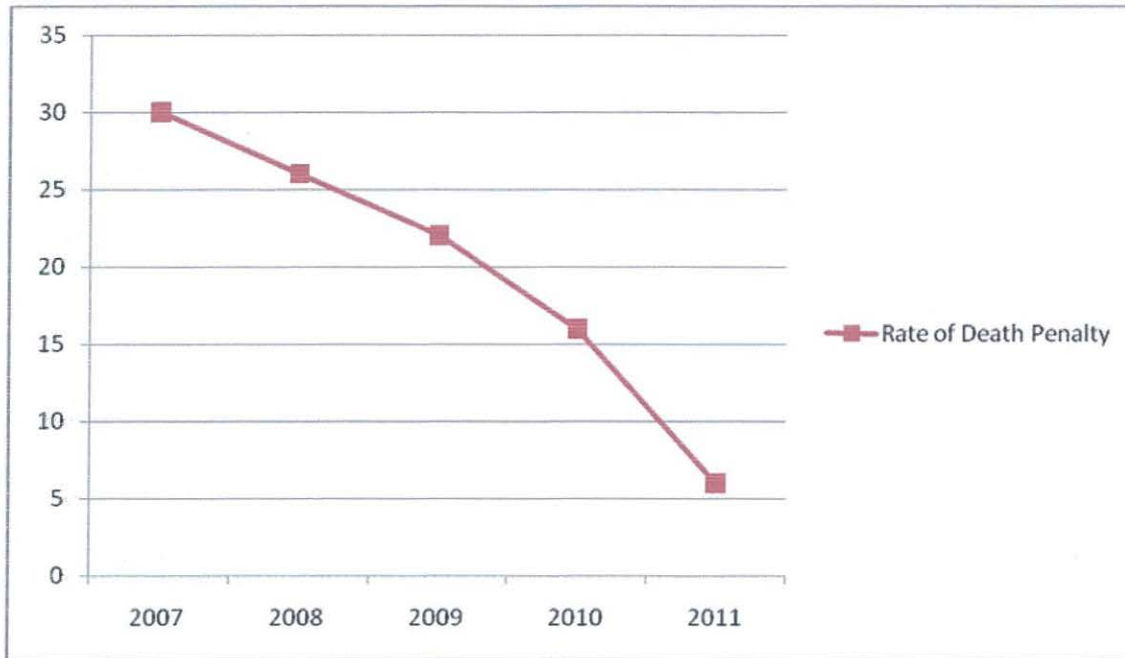
In a similar way, provisions of the Penal Code Act, Section 188 and 189 also provides the need for death penalty for persons who commit murder. Concerning the aspect of kidnapping or detaining with intent to murder, Section 243 of the Penal Code also provides the need for capital punishment for such offenders. Regarding rape, Section 123 and 134 also provides the need for capital punishment or death penalty.

In this regard it can therefore be said that respondents' views regarding the crimes that are punishable by death penalty in Luzira are factual since what they revealed in the case of Luzira corresponds with the provisions in the Penal Code Acts.

4.4 The Rate of Death Penalty in Luzira Prisons

The second objective of this study was to investigate the rate of death penalty in Luzira prisons. This was done to find out whether capital punishment is commonly carried out or not. This was based on the occurrence of capital punishment in the last five years. Figure 4.7 illustrates the summary on the rate of death penalty in Luzira Prisons.

Figure 4.7: Level of Death Penalty from 2007-2011



Source: Primary Data

The general impression or observation from Figure 4.7 is that the rate of executing capital offenders in Luzira is declining. This has been confirmed by the falling trend of the line graph. According to the graph, the level of occurrence of execution by death penalty was very high in 2007 (30 %) of the total rate in the last five years; this was followed by the rate in 2008 (26 %); and then that of 2009 (22 %); next was in 2010 in which the rate went down to 16 percent and lastly, in 2011, the rate of execution of capital offenders drastically went down to only 6 percent of the total percentage of the last five years.

The falling trend of the graph indicates that Uganda is on its way to the abolition of Capital punishment.

4.5 Justifications for Capital Punishment

Before the establishment of justifications of capital punishments, respondents were asked on whether they support the aspect of punishing criminal by death penalty or not. The findings are summarized in Table 4.6.

Table 4.6: Whether Punishing Criminals by Death Penalty is Effective or Not

Responses	Frequency	Percentage
Yes	35	44
No	45	56
Total	80	100

Source: Primary Data

As it can be seen from the Table 4.6, 56 percent of the respondents asked were against the use of capital punishment or death penalty as a way of punishing capital offenders while 44 percent of them were against the use of death penalty to punish capital offenders. As it can be seen, the difference between the two groups against and for death penalty is not so wide. This means much as the practice seems to be inhuman, it may also be good in some cases.

In giving reasons for supporting the use of capital punishment or death penalty for capital offenders, responders believed that people who have continues record for committing murder should be prosecuted. As said by one of the magistrates (interviewed on 15 June, 2012), “If you leave a person with consistent record of murder to walk free, what answer will you give to people when he commits another murder?” The impression from this quotation is that some respondents greatly support that those who commit murder intentionally should also be punished by death penalty.

Further still, about 40 percent of respondents believed that a state as a body represents the interests of people or society. According to these respondents, any individual against the state poses a dangerous or is threat to the entire society. Thus, to protect the interest of state that represents and protects the interests of society, death penalty is appropriate.

As for some respondents, there is no any other punishment that suits those who commit crimes against humanity, support and commit genocide and terrorism. These respondents believed that the only way of preventing or discouraging others from committing such crimes is by not compromising with the offenders but giving them capital punishment.

However, the majority of the respondents noted that those who commit rape should not be put under death rows or be punished by death penalty. Many of them believed that rape cases should be severely dealt with but not through giving capital punishment.

The general impression here is that many respondents support death penalty for cases against humanity of that poses substantial threat to entire society. Thus, any crime that does not pose a serious threat to society can be charged or punished with other alternative ways.

4.6 Limitations of Death Penalty

This was also one of the major aspects investigated in the field. Respondents were asked to give their opinions regarding the limitation of death penalty.

According to about 80 percent of the respondents investigated about the application of or punishment by death penalty, this kind of punishment is not good for human kind. In giving reasons to support their view, many confirmed that death penalty is torture, cruel, inhuman or degrading treatment or punishment. It is within this background that death penalty is limited and should not be tolerated any more.

In similar way, about 60 percent of the respondents asked about the limitations of death penalty believed that death penalty is a basically damages public policy that has outlived any usefulness it may have once had. In this regard, they revealed that the punishment should be abolished. This finding was in agreement with that of Gunn (2004) in which this kind of punishment was regarded as rudimentary way of punishing people.

Instigations into the limitations on death penalty according to respondents investigated were that some people are innocently punished with death penalty when they have not actually committed the crime presumed. This therefore verifies that death penalty is quite limited thus, there is need to abolish it.

In justifying that death penalty is limited, about 50 percent of the respondents also asserted that since there is a sound alternative to capital punishment like life in jail without parole, it becomes useless to continue with the practice. This suggests that, many of the respondents could no longer see that need to continue employing the penalty.

In demonstrating how limited the death penalty is, some of the respondents investigate compared the act with the act of terrorism. According to one of prisoner officer interview for example, capital punishment is an extreme sanction that is properly set aside for the worst of the worst ongoing killers like any others terrorists. For instance when City bomber are found such as terrorist and they are arrested there as a result it will be the duty of involving the death penalty

and should be abolished as legal right for human being to be save life but due to the capital sentence the case will not be taken as much as serious issue because the funds.

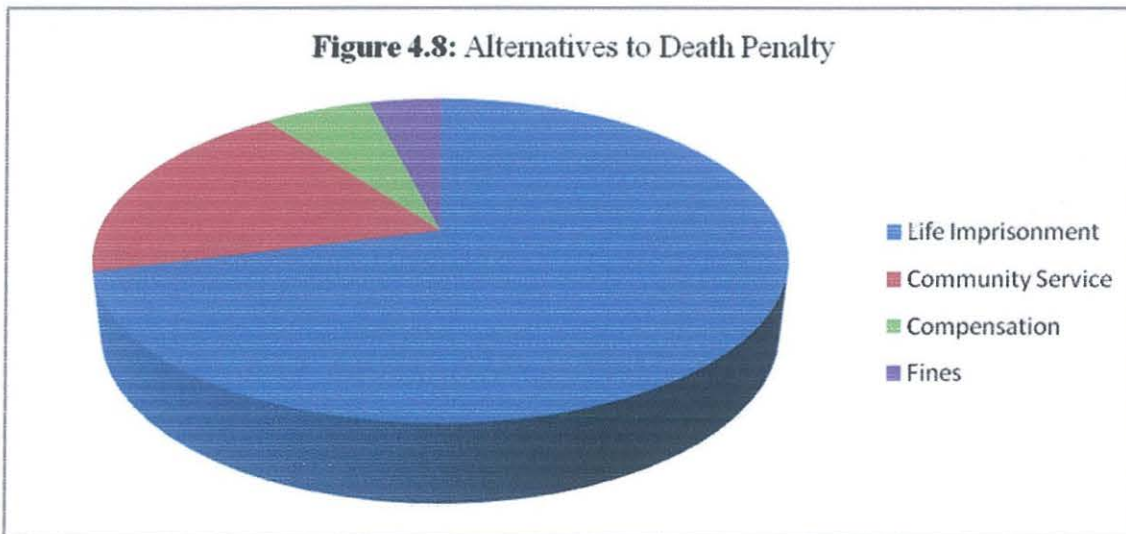
4.7 Alternative Ways of Punishing Capital Offenders

After establishing the limitations of death penalty as punishment to capital offenders, respondent's views regarding the alternative ways to punish capital offenders was sought. The summary regarding this is summarized in Table 4.7 below.

Table 4.7: Alternative Ways of Punishing Capital Offenders

Alternative Ways	Frequency	Percentage
Fines	3	4
Life imprisonment	57	71
Compensations	5	6
Community service	15	19
Total	80	100

Source: Primary Data



Source: Primary Data

As it can be seen in Figure 4.8, 71 percent of the respondents investigated considered death penalty to be replaced with life imprisonment. Their argument was actually in line with the

constitutional provision section A. 24 which provides respect for human dignity and protection from inhuman treatment.

According to 19 percent of the respondents, death penalty that is also called capital punishment should be abolished and replaced with community service. For these respondents, the community can not benefit when a person is killed for an offence committed. Thus, by doing some community service, the capital offender is contributing to the development of country and paying back for committing such a crime.

Further still, six percent of the respondents investigated considered that the death penalty should be abolished and capital offenders should only be asked to compensate properly for the offences committed. Although, these respondents could not explain clearly the terms of this compensation, the researcher does not think it is a suitable form of punishment for murders and terrorists.

For about 4 percent of the respondents, capital offenders should be heavily fined for what ever they commit. As for these respondents, heavy fines can teach offenders and they refrain from doing or committing capital offenders.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0. Introduction

In this chapter, the researcher draws some conclusions based on the analysis in the previous chapters, draws a conclusion and forwards some recommendations. These recommendations are based on the usefulness and limitations of death penalty as a punishment.

5.1 Summary of Major Findings

Findings regarding the profile of respondents indicate that 67.5 percent of the respondents were males while 33.5 of them were females; over 55 percent of the respondents were youth while few of them were the elderly; over 60 percent of the respondents were highly educated as there were either diploma holder or degree holders or masters degree holders; over 50 percent of the respondents had over 6 years of experience in legal practices or in imprison thus capable of delivering necessary information needed; and lastly, respondents had different religious background hence making them deliver information regarding the variable in relation to their religious influence.

Concerning the crimes that are still punishable in Luzira by death penalty, it was discovered that the majority of the inmates in death row are convicted of murder, followed by kidnapping, then treason, next was terrorism; then others and lastly was rape.

Investigations regarding the rate of death penalty in Luzira Prisons also indicate that sine the year 2007, the rate of the punishment has been going down. From the year 2007, it was rated 30 percent but now respondents rated the act of punishing capital offenders by death penalty only 10 percent in 2011.

Regarding whether capital offenders should be punished by death penalty or not, it was found out that the majority of the respondents were against the practice while few of them still insisted that the practice should not be scraped off completely since it may work to protect the society from those without moral sense.

Respondents indicated that death penalty has the limitation of sometimes prosecuting the innocent ones, that the practice cruel, inhuman, is torture, cruel, inhuman or degrading treatment or punishment.

In giving out alternative punishments for death penalty, respondents cited life imprisonment, community work, compensation and fines as a way of punishing capital offenders.

5.1. Conclusions

The impression from the study is that punishing capital offenders by capital punishment or death penalty is not appropriate in the modern or contemporary world. This is so since it goes against the constitutional provisions of respect for human dignity and protection from inhuman treatment as per Article 24 of the constitution; protection of right to life as per Article 22 of the constitution.

5.2. Recommendations

Regarding the study findings, the following recommendations have been forwarded:

To respect human dignity and protection from inhuman treatment, death penalty should be abolished since no man was vested with authority and power to end another man's life no matter the circumstances.

The government of Uganda should also consider some of changes that are going on throughout the world regarding the death penalty. If some of these changes are accommodated, then the death penalty is likely to be abolished soon.

Different legal frameworks and organizations should try to work together in ensuring that punishing capital offenders by death penalty is abolished.

Non-Governmental organization should also get involved in putting some pressure on the government and sensitize the public on the need to abolish death penalty.

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APPENDICES

APPENDIX 1: QUESTIONNAIRE TO PRISONER WARDENS

Dear Respondent,

The attached questionnaire has been designed purposely for data collection on the *“Constitutionality of Death Penalty and Reduction of Capital Crimes.”*

You have been identified as a potential respondent who can provide useful and reliable information that will help different stakeholders to advocate for abolition of death penalty in Uganda.

The information being gathered is for academic research which will be submitted to Kampala International University in partial fulfillment of the requirements for the award of a Bachelors Degree in Laws.

You are kindly requested to contribute towards this research through answering the questionnaire. I will be very grateful for your honest opinions presented. The responses shall be treated with at most confidentiality.

Thanks in advance for sparing time to respond to this questionnaire. I expect to receive feed back within one week’s time from the data of receipt.

Thank you,

Yours faith fully

Serunjogi Divinor

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4. Do you support criminals being convicted of death penalty?

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5. According to your answer to question 5, give reasons to support you position.

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6. On average, how many prisoners have been executed with death penalty in the last five years in Luzira Prisons?

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7. How long can it take for one to be executed in Luzira Prison?

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8. What makes them to take the time you have just indicated in question 7 above?

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9. What methods are used to kill those convicted of capital punishment at the moment?

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10. Are there some valid reasons for executing prisons for capital offences?

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11. If yes what are these valid reasons and if not why do you say so?

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12. If there are some valid reasons for convicting prisoners with death penalty, are these reasons fundamentally legal? If yes, give the legality of these and if not include the illegality of them?

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13. What are some of the limitations of death penalty in Uganda?

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14. What other ways can be used to substitute death penalty in Uganda?

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15. What other thing would you like to say about death penalty and reduction of capital crimes in Uganda?

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.....

Thank you for your cooperation

APPENDIX 2: QUESTIONNAIRE TO JUDGES, ADVOCATES AND MAGISTRATES

Dear Respondent,

The attached questionnaire has been designed purposely for data collection on the *“Constitutionality of Death Penalty and Reduction of Capital Crimes.”*

You have been identified as a potential respondent who can provide useful and reliable information that will help different stakeholders to advocate for abolition of death penalty in Uganda.

The information being gathered is for academic research which will be submitted to Kampala International University in partial fulfillment of the requirements for the award of a Bachelors Degree in Laws.

You are kindly requested to contribute towards this research through answering the questionnaire. I will be very grateful for your honest opinions presented. The responses shall be treated with at most confidentiality.

Thanks in advance for sparing time to respond to this questionnaire. I expect to receive feed back within one week’s time from the data of receipt.

Thank you,

Yours faith fully

Serunjogi Divinor

SECTION A. Respondents' Demographic Information

Kindly answer all questions. Put a tick (√) where appropriate.

B. Age

20-29 30-39 40-49 50-59 60 and above

B. Gender

Male Female

C. Working Experience

1-5 6-10 11 and above

D. Education Level

Secondary Diploma Degree Masters

E. Denomination

Protestant Catholic Pentecostal Moslem
Others

SECTION B: OBJECTIVE RELATED QUESTIONS

- In average, how many prisoners do you sentence to death penalty in a year?
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- What are some of the cases against these prisoners being convicted of death penalty?
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3. What crimes can be punishable with death penalty?

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4. Do you support criminals being convicted of death penalty?

.....

5. According to your answer to question 5, give reasons to support you position.

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.....

6. How long can it take for one to be executed in Luzira Prison?

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7. What makes them to take the time you have just indicated in question 6 above?

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8. What methods are used to kill those convicted of capital punishment at the moment?

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9. Are there some valid reasons for executing prisons for capital offences?

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10. If yes, what are these valid reasons and if not why do you say so?

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11. If there are some valid reasons for convicting prisoners with death penalty, are these reasons fundamentally legal? If yes, give the legality of these and if not include the illegality of them?

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12. What are some of the limitations of death penalty in Uganda?

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13. What other ways can be used to substitute death penalty in Uganda?

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14. What other thing would you like to say about death penalty and reduction of capital crimes in Uganda?

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Thank you for your cooperation

APPENDIX 3: INTERVIEW GUIDE TO PRISONERS

SECTION A. Respondents' Demographic Information

Kindly answer all questions. Put a tick (✓) where appropriate.

C. Age

20-29 30-39 40-49 50-59 and above

B. Gender

Male Female

C. Working Experience

1-5 6-10 11 and above

D. Education Level

Secondary Diploma Degree Masters

E. Denomination

Protestant Catholic Pentecostal Moslem
Others

SECTION B: OBJECTIVE RELATED QUESTIONS

1. How many are you in Death Rows in Luzira Prison?

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2. What are some of the cases against you being convicted of death penalty?

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3. Do you support criminals being convicted of death penalty?

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4. According to your answer to question 3, give reasons to support your position.

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5. On average, how many prisoners have been executed with death penalty in the years you have spent in Luzira Prisons?

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6. How long can it take for one to be executed of death penalty in Luzira Prison?

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7. What makes them to take the time you have just indicated in question 6 above?

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8. What methods are used to kill those convicted of capital punishment at the moment?

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9. Are there some valid reasons for executing prisoners for capital offences?

.....

10. If yes what are these valid reasons and if not why do you say so?

.....
.....

11. If there are some valid reasons for convicting prisoners with death penalty, are these reasons fundamentally legal? If yes, give the legality of these and if not include the illegality of them?

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12. What are some of the limitations of death penalty in Uganda?

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13. What other ways can be used to substitute death penalty in Uganda?

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14. What other thing would you like to say about death penalty and reduction of capital crimes in Uganda?

.....
.....

Thank you for your cooperation

APPENDIX 4: Research Budget

ITEMS	COSTS (UGX)
Data collection and coding	-
Transport charges	60,000
Lunch	50,000
Library and Internet	40,000
Photocopying	40,000
Communication	40,000
Report writing	
Typing	60,000
Printing	70,000
Binding	30,000
Other expenses	100,000
Total	490,000 UGX

**APPENDIX 5: Research Duration
MONTHS**

ACTIVITIES	May				June				July				August			
	No of weeks				No of weeks				No of weeks				No of weeks			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Orders																
Project proposal			→													
Contacting Schools					→											
Data collection							→									
Data analysis and interpretation									→		→					
Printing													→			
Submission																→